



A-520-804
Sunset Review
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July 28, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: First Expedited Sunset Review of the Antidumping Duty Order on
Certain Steel Nails from the United Arab Emirates: Issues and
Decision Memorandum for the Final Results

I. Summary

We analyzed the substantive response of the sole participating interested party in the first sunset review of the antidumping duty (AD) order covering certain steel nails (nails) from the United Arab Emirates (UAE). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of this order. We recommend that you approve the positions we describe in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

II. Background

On April 27, 2011, the Department of Commerce (Department) published the notice of the *AD Order* on nails from the UAE.¹ On April 3, 2017, the Department published the notice of initiation of the first sunset review of the *AD Order*, pursuant to section 751(c) of the Tariff Act

¹ See *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*AD Order*).

of 1930, as amended (the Act).² On April 4, 2017, the Department received a timely notice of intent to participate from one domestic interested party: Mid Continent Steel & Wire, Inc. (Mid Continent) within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Mid Continent claimed interested party status under section 771(9)(C) of the Act, as a manufacturer in the United States of a domestic like product. On May 4, 2017, the Department received a complete and adequate substantive response from Mid Continent within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ The Department received no substantive responses from respondent interested parties with respect to the *AD Order*. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *AD Order*.

III. Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this order are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this order are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;

² See *Initiation of Five-Year (Sunset) Reviews*, 82 Fed. Reg. 16159 (April. 3, 2017) (*Notice of Initiation*).

³ See Mid Continent’s submission “Re: Certain Steel Nails from the United Arab Emirates: Substantive Response to Notice of Initiation of Sunset review” (May 3, 2017) (Mid Continent’s Substantive Response).

⁴ See Mid Continent’s Substantive Response.

- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. History of the Order

This is the first sunset review of the *AD Order*. On April 20, 2011, the Department initiated its less-than-fair-value (LTFV) investigation of nails from the UAE.⁵ On March 23, 2012, the Department published its final determination in the LTFV investigation.⁶ On May 10, 2012, following an affirmative injury determination by the International Trade Commission (ITC), the Department published its amended final determination and the *AD Order* on nails from the UAE.⁷ Since the issuance of the *AD Order*, the Department has completed three administrative reviews, while the fourth is ongoing.⁸ No other scope rulings, anti-circumvention inquiries, or

⁵ See *Antidumping Duty Order: Certain Steel Nails from the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 76 FR 23559 (April 27, 2011).

⁶ See *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) (*Final Determination*).

⁷ See *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012).

⁸ See *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013*, 79 FR 78396 (December 30, 2014) and accompanying Issues and Decision Memorandum; *Certain Steel*

critical circumstances inquiries have been conducted involving this *Order*. The *AD Order* remains in effect for all manufacturers and exporters of nails from the UAE.

V. Legal Framework

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after, the issuance of the antidumping duty order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA),⁹ the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),¹⁰ and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's likelihood determinations will be made on an order-wide, rather than company-specific, basis.¹¹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹² Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹³

In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.¹⁴ Also, when analyzing import volumes for second and subsequent

Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 32527 (June 9, 2015) and accompanying Issues and Decision Memorandum; *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 71482 (October 17, 2016) and accompanying Issues and Decision Memorandum; *Certain Steel Nails from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 24941 (May 31, 2016) and accompanying Issues and Decision Memorandum.

⁹ Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

¹⁰ Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹¹ See SAA at 879 and House Report at 56.

¹² See SAA at 889-90, House Report at 63-64, and Senate Report at 52. See also *Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

¹³ See SAA at 889-90.

¹⁴ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹⁵

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹⁶ However, in certain circumstances, a more recently calculated rate may be more appropriate (e.g., "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").¹⁷

In February 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.¹⁸ In the *Final Modification for Reviews*, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.¹⁹ The Department further stated that apart from the "most extraordinary circumstances," it did not anticipate needing to recalculate dumping margins in the vast majority of future sunset determinations and, instead would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it may also rely on past dumping margins that were calculated without zeroing, "such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."²⁰

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.²¹

¹⁵ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum.

¹⁶ See SAA at 890; and *Sunset Policy Bulletin* at section II.B.1. See also, e.g., *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) (*Persulfates from the PRC*) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁷ See SAA at 890-91; and *Sunset Policy Bulletin* at section II.B.2.

¹⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 and accompanying Issues and Decision Memorandum at Comment 1 (April 5, 2007).

VI. Discussion of the Issues

1. *Likelihood of Continuation or Recurrence of Dumping*

Mid Continent's Comments:

- ITC data demonstrate that the *AD Order* had an immediate effect on imports of certain steel nails from the UAE, including a significant drop in import volume since the imposition of the *AD Order*.²² The ITC data also demonstrate that, even with the *AD Order* in this proceeding, a new producer, Overseas Distribution Services (ODS), began shipping in substantial volumes.²³
- The information submitted by ODS during the ongoing fourth administrative review demonstrates that ODS has substantial capacity that could easily be used to increase shipments if the *AD Order* were revoked.²⁴
- While the number of producers in the UAE is small, these companies are entirely export-oriented and have a substantial capacity to produce and ship large volumes of nails to the United States²⁵
- Were the *AD Order* to be revoked, it is likely, if not certain, that UAE exporters would resume dumping at levels observed in the original investigation, or higher, to return to the U.S. market and regain market share.²⁶
- Dubai Wire, while said to be defunct, continues to retain production equipment, and even if this equipment were to be sold, it would likely remain in the UAE and could easily return to service if the *AD Order* were revoked.²⁷
- The ITC found that subject imports and the domestic like product have “a high degree of substitutability” and that “price is an important fact in purchasing decisions for steel nails.”²⁸ The ITC’s findings serve as further evidence that certain steel nails from the UAE would be sold at less than fair value in the U.S. market if the *AD Order* were revoked and accordingly, the Department should not revoke the *AD Order* on certain steel nails from the UAE.²⁹
- Given the highly interchangeable nature of the goods, and the importance of price in purchasing decisions, that any new source of steel nails would be expected to lower its prices below those of existing suppliers in order to gain a foothold in the market and

²² See Mid Continent’s Substantive Response at 10 (citing USITC Dataweb).

²³ *Id.*

²⁴ See Mid Continent’s Substantive Response at 11 (citing Exhibit 1 *Letter from Sandler Travis to Sec’y of Commerce, Certain Steel Nails from the United Arab Emirates: 4th Administrative Review: Section A at Exhibit A-10* (Sept. 19, 2016)).

²⁵ See Mid Continent’s Substantive Response at 11.

²⁶ *Id.*

²⁷ See Mid Continent’s Substantive Response at 12 (citing Exhibit 2 (*Letter from Grunfeld Desiderio et al. to Sec’y of Commerce, Factual Information in Support of Calculating DWE Dumping Margin Based on Neutral Facts Available; Second Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates at Exhibit 5* (Nov. 26, 2014)).

²⁸ See Mid Continent’s Substantive Response at 12 (citing *Certain Steel Nails from the United Arab Emirates*, USITC Pub. 4321 (Final) at 13 and 18 (May 2012)).

²⁹ *Id.*

expand its share.³⁰ The U.S. market for steel nails is highly price-sensitive, and sales are won or lost based on price differences measured in pennies per unit.³¹

- The Department should determine that dumping would likely continue or recur if the *AD Order* on certain steel nails from the UAE were revoked.³²

Department's Position: As explained above, the Department's determinations of likelihood are made on an order-wide basis.³³ In addition, the Department normally will determine that revocation of the *AD Order* is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the *AD Order*; (b) imports of the subject merchandise ceased after the issuance of the *AD Order*; or (c) dumping was eliminated after the issuance of the *AD Order* and import volumes for the subject merchandise declined significantly.³⁴

Additionally, when determining whether revocation of the *AD Order* would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Order*. According to the SAA, “[d]eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”³⁵

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the “zeroing” methodology. The Department announced that its modification to the calculation of weighted-average dumping margins in antidumping duty investigations applied in investigations as of February 22, 2007.³⁶ Thus, the dumping margins in the original investigation were not affected by a WTO-inconsistent methodology because we issued both the final determination and amended final determination after this change in practice.³⁷ Additionally, the final results of all of the administrative reviews in this proceeding,

³⁰ See Mid Continent's Substantive Response at 12.

³¹ *Id.*

³² See Mid Continent's Substantive Response at 14.

³³ See SAA at 879 and House Report at 56.

³⁴ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also *Sunset Policy Bulletin*, 63 FR at 18872.

³⁵ See SAA at 889.

³⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007).

³⁷ See *Final Determination*, 77 FR at 17032 (showing issuance date of March 19, 2012); *AD Order*, 77 FR at 27422 (showing issuance date of amended final determination as May 4, 2012).

were issued after the *Final Modification* and, therefore, did not include margins that were calculated using zeroing.³⁸

Separately, pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Order*. Specifically, we reviewed the import data on the record which reflects imports of nails from the UAE for the period from 2010 through 2016, which is based on data collected by the U.S. Census Bureau and available through the ITC website.³⁹ This data is acceptable for our analysis, and the Department has relied on such information in past proceedings.⁴⁰ We find that record evidence shows that imports of nails from the UAE are lower when compared to pre-initiation levels.⁴¹

The Department also compared the volume of imports for the one-year period preceding the initiation of the investigation (2010 to 2011) to the volume of imports during the period of this sunset review (2012 to 2016).⁴² In comparing these import volumes, we find that since the issuance of the *AD Order*, import volumes of nails from the UAE into the United States have fluctuated.⁴³ Given that imports continued despite the above *de minimis* dumping margins that remain in effect, pursuant to section 752(c)(1) of the Act, the Department determines that dumping would likely continue or recur if the *AD Order* were revoked.

2. Magnitude of the Margins Likely to Prevail

Mid Continent's Comments:

- The revocation of the *AD Order* on certain steel nails from the UAE would likely lead to the continuation or recurrence of dumping of UAE merchandise in the U.S. market, at margins at least equal to those found in the original investigation.⁴⁴
- The ITC data that demonstrates that after the *AD Order* came into effect in 2012, that imports of subject merchandise into the United States significantly decreased but dumping persists.⁴⁵
- The Department should report to the ITC that the magnitude of the dumping margin that is likely to prevail is identical to the margins determined in the original investigation, ranging from 2.51 percent to 184.41 percent *ad valorem*.⁴⁶

³⁸ See *Final Rule*, 71 FR at 77722.

³⁹ See Mid Continent's Substantive Response at 10 (citing USITC Dataweb).

⁴⁰ See, e.g. *Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 and accompanying Issues and Decision Memorandum at 5 (April 7, 2014).

⁴¹ See Mid Continent's Substantive Response at 10 (citing USITC Dataweb).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Mid Continent's Substantive Response at 13.

⁴⁵ *Id.*

⁴⁶ *Id.* at 14.

Department's Position: Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a weighted-average dumping margin from the LTFV investigation to report to the ITC.⁴⁷ The Department's preference for selecting a margin from the LTFV investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. As indicated in the "Legal Framework" section above, consistent with the *Final Modification for Reviews*, the Department's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology. The 184.41 percent rate applied in the LTFV investigation was based on a rate from the petition and was calculated without zeroing.⁴⁸ Accordingly, the Department will report to the ITC the rates as indicated in the "Final Results of Review" section below.

VII. Final Results of Review

We determine that revocation of the *AD Order* would likely lead to continuation or recurrence of dumping. We also determine that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 184.41 percent.

VIII. Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our determination.



Agree

Disagree

7/28/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁴⁷ See SAA at 890; see also, e.g., *Persulfates from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁸ See *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029, 17030 (March 23, 2012) (discussing "the normal value and net U.S. price underlying the calculation of 184.41 percent rate in the petition," and thus indicating that this petition rate was based on a single sale).